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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 665

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PUERTO RICO,
PETITIONER,

v.

JOSE R. NOGUERA, SECRETARY OF THE TREASURY OF PUERTO RICO,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT IN OPPOSITION

J. B. FERNANDEZ BADILLO
Solicitor General
AMERICO SERRA
Assistant Solicitor General
Attorneys for Respondent.

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SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement	2
Argument	4
Conclusion	9
Appendix	10

TABLE OF CITATIONS

Cases

Laureus Federal Saving and Loan Ass'n v. South Carolina Tax Commission, 365 U.S. 517, 523 (1961)	7
North Arlington Nat. Bank v. Kearney, Federal Savings Loan Ass'n, 187 F2d 564, 3 Cir. (1951)	9

Statutes

Act 52 of July 11, 1921 (3 L.P.R.A., Sec. 831 et seq)	2, 8
Home Owner's Loan Act of 1933, Sect. 5(h) 48 Stat. 128, 12 USCA Sec. 1464 (h)	2, 3, 5, 6, 7
12 USCA Sec. 1464 (b) and (c)	9
48 Stat. 128, 12 USCA Sec. 1461 et seq.	2
48 Stat. 134, 12 USCA Sec. 1466	7

Miscellaneous

Russell, Saving and Loan Association, M. Bender & Co., 2d ed. 1960, p. 571	7, 8

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Opinions Below

The opinion of the Supreme Court of Puerto Rico (R. 43-62), not yet officially published, and the opinion of the Superior Court of Puerto Rico (R. 9-13), unreported, are printed in the Appendix to Petition for Writ of Certiorari.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari.[1]

Question Presented

Whether Section 5(h) of the Home Owners' Loan Act of 1933, 48 Stat. 128 (12 U.S.C.A. § 1464(h)) exempts petitioner from the payment of property taxes imposed on certain of its personal property by the Commonwealth of Puerto Rico for the fiscal year 1957-58.

Statutes Involved

The statutory provisions involved are the Home Owners' Loan Act of 1933 (48 Stat. 128 et seq., 12 U.S.C.A. § 1461 et seq.); and Act No. 52 of July 11, 1921, as amended (3 L.P.R.A. § 831 et seq.), which creates the Puerto Rico Government Employees Association.[2] The pertinent provisions of these statutes are printed in the Appendix, *infra*.

Statement

Petitioner is a federal savings and loan association organized under the provisions of the Home Owners' Loan Act of 1933 (48 Stat. 128 et seq.; 12 U.S.C.A. § 1461 et seq.), dedicated to provide facilities for mutual savings and for the financing of homes in Puerto Rico. On July 1, 1958 the Secretary of the Treasury of Puerto Rico notified petitioner with an assessment and imposition of tax on certain of petitioner's personal property located in San

[1] Hereinafter referred to as "the Petition".

[2] That is its name since April 23, 1954. See 3 L.P.R.A. § 831, 1961 Supp.

Juan, Puerto Rico, for the fiscal year 1957-58. Such property was assessed at $400,000.00 and the corresponding tax for said fiscal year was fixed at $10,040.00. On July 23, 1958 the Secretary of the Treasury reduced the assessment on petitioner's personal property to $209,030.00, consequently reducing to $5,246.65 the tax imposed on said property for fiscal year 1957-58.

Petitioner filed a complaint in the Superior Court of Puerto Rico, San Juan Part, praying that the notice of assessment and imposition of tax on its personal property be annulled and set aside (R. 1-4). It was alleged that according to Section 5(h) of the Home Owners' Loan Act of 1933 the Commonwealth of Puerto Rico had no power to impose an I collect taxes of any nature from petitioner, because during the fiscal year 1957-58 there did not exist any local institution dedicated to provide and maintain facilities for mutual or cooperative savings and home financing in the Commonwealth of Puerto Rico (R. 2-3). The Superior Court upheld respondent's assessment and imposition of the tax, and in so doing it stated:

> "The right of Congress to prohibit the imposition of taxes to the entities created under its laws is not involved herein. Nor is involved in this case either its right to authorize the imposition of taxes, federal or local, to such entities. In the case at bar, the authority to locally impose taxes on associations created under the federal Act above referred to clearly flows from the text and meaning of the provision above cited. When it says that 'no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local institutions,' it means that when the tax *is not*

greater than those imposed upon other similar local associations, the local tax is thus authorized and is legal. Even though the authorization to impose it appears in the negative, it is no less clear."

. . . . . .

. . . . . "The fact, which defendant accepts, that in Puerto Rico there do not exist similar local entities dedicated to provide and maintain facilities for mutual or cooperative savings and home financing cannot destroy the effect and evident purpose of the statute to authorize the local imposition of taxes to said federal entities, subject of course to the condition that if there existed any similar local entities with the same purpose, the tax fixed to the federal association in no case can be greater than the tax fixed to the local associations. Statutes should be construed, if possible, so as to give force and effect to all of the language employed therein. Cf. *First Federal Savings & Loan Ass'n.* v. *Johnson*, 122 P. 2d 84." (Appendix of Petition, pp. 35, 36; R. 11, 12)

The Supreme Court of Puerto Rico affirmed the judgment of the Superior Court. (Appendix of Petition, p. 33; R. 63).

Argument

The issue before this Court in this case was aptly stated by Mr. Justice Rigau in the opinion of the Supreme Court of Puerto Rico, as follows:

". . . whether or not the above-mentioned § 5(h) of the aforesaid act of Congress [Home Owners' Loan Act of 1933] exempts the savings and loan associa-

> tions incorporated or which might be incorporated under the above-cited act from the taxes imposed or which might be imposed by the Commonwealth of Puerto Rico." (Appendix of Petition, p. 20).

The Supreme Court of Puerto Rico concluded that under Section 5(h) of said Home Owners' Loan Act of 1933 petitioner was not exempt from the payment of property taxes imposed by the Commonwealth of Puerto Rico.

Petitioner asserts that the decision of the Supreme Court of Puerto Rico is probably in conflict with the decisions of this Court. Petitioner's argument relies on the assumption that when the question is presented this Court will probably decide that a federal savings and loan association is a federal instrumentality. However this might be, petitioner overlooks the fact that this question is not at issue in the instant case. As the Supreme Court of Puerto Rico stated:

> "It might have been important, for the purposes of this case, to decide whether or not petitioner is a federal instrumentality, if Congress would have kept silent as far as the imposition of state taxes is concerned, but Congress decided the issue expressly authorizing the imposition of said taxes in § 5(h) of the Act. Therefore, it is unnecessary that we decide said question since the outcome of this case would be the same in either case. Whether or not petitioner is considered a federal instrumentality, state taxation is permitted by virtue of § 5(h) above-cited. . ." (Appendix of Petition, pp. 26-27)

Nor does this case concern the immunity of federal instrumentalities from state taxation. Or as the Court below in the instant case pointed out:

"In view of the allegations that follow, it is fitting to make clear at the beginning that the power of the Congress of the United States to exempt the instrumentalities of the Federal Government from taxation, is not at issue in this case. It is well known that Congress has the power to determine, within the limits of the Constitution, to what extent its instrumentalities shall enjoy immunity from taxation. *Federal Land Bank* v. *Kiowa County*, 368 U. S. 146, 149 (1951); *Carson* v. *Rogne-Anderson Co.*, 342 U. S. 232 (1952); *Cleveland* v. *United States*, 323 U. S. 329 (1945); *Maricopa County* v. *Valley National Bank*, 318 U. S. 357 (1943); *Federal Land Bank of St. Paul* v. *Bismark Lumber Co.*, 314 U. S. 95 (1941); *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21 (1939); *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466 (1939); *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103 (1923); *First National Bank* v. *Adams*, 258 U. S. 362 (1922); *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664 (1899)." (Appendix of Petition, pp. 19-20)

The outcome of the case depends solely on the construction of Section 5(h) of the Home Owners' Loan Act of 1933, which exempts federal savings and loan associations from federal taxes, with some exceptions, and then provides:

". . . . [N]o State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." (12 U.S.C.A. § 1464(h))

This Court recently held that this provision "unequivocally bars discriminatory state taxation of the Federal Savings and Loan Associations". *Laurens Federal Savings & Loan Assn.* v. *South Carolina Tax Commission*, 365 U. S. 517, 523 (1961). Obviously the statement made by the Supreme Court of Puerto Rico in the case at bar, to the effect that the purpose of Congress in enacting the above-cited provision was to protect federal savings and loan associations from possible discriminatory state taxation against said federal associations and in favor of state associations, is consistent with the statement made by this Court in the *Laurens* case, *supra*.

The Supreme Court of Puerto Rico decided that the Commonwealth of Puerto Rico has the right to tax petitioner, because by virtue of Section 5(h) of the Home Owners' Loan Act of 1933 Congress expressly authorized the States and the other local taxing authorities[3] to impose taxes on federal savings and loan associations provided such taxes are not greater than those imposed on similar local institutions. The fact that no similar institution exists, does not have the effect of exempting petitioner from the payments of taxes imposed by the Commonwealth of Puerto Rico. If no similar local institution exists, the tax imposed by the local taxing authority is not discriminatory, nor greater than that imposed on other similar local institutions. This is a reasonable and correct construction of the statute. Horace Russell, a well known author in the field of savings and loan associations, has said:

> ". . . . Stated positively, the meaning [of Section 5(h)] would be that any state may impose any such tax on federal associations, provided any such tax is

[3] The provisions of the Home Owners' Loan Act of 1933 apply to Puerto Rico. 48 Stat. 134; 12 U.S.C.A. § 1466.

not greater than the tax or taxes imposed on similar state institutions. In the absence of a specific exemption, the provision appears to authorize almost any form of nondiscriminatory tax; . . ."[4]

Petitioner contends, in the alternative, that there was a similar local mutual or cooperative thrift and home financing institution in Puerto Rico, namely, the Puerto Rico Government Employees Association.

The Puerto Rico Government Employees Association is "a *public* institution, *compulsory* upon all permanent public employees and officials" of the Government of Puerto Rico, "the purposes of which shall be to stimulate saving among its members and to insure them against physical disability or death, to make loans, to provide them with home and clinics for medical treatment for themselves and their families, and any other activity which the board of directors may, after study, deem beneficial and adequate for the purposes hereof, subject to the laws which govern said association; and to promote by all available means and resources the betterment and individual and collective progress of the members thereof in the economic, moral and physical orders, . . ." (Italics supplied) (Section 1 of Act No. 52 of July 11, 1921; 3 L.P.R.A. § 831). This institution is governed by a board of directors in which each of the three branches of government is represented. The statute which creates this association provides for the deduction from the monthly salary of all permanent employees and officials of the Government, which sums are set aside by the Secretary of the Treasury to constitute the Savings and Loan Fund. Home financing is not the main purpose of this association.

On the other hand, the federal savings and loan associ-

[4] Russell, Savings and Loan Associations, M. Bender & Co., 2d ed., 1960, p. 571.

ations are created for the purpose of providing local mutual thrift institution in which people may invest their funds, and to provide for the financing of homes. 12 U.S.C.A. § 1464(a); *North Arlington Nat. Bank* v. *Kearny Federal Savings & Loan Ass'n.*, 187 F.2d 564, 3 Cir. (1951). Such associations raise their capital only in the form of payment on shares, and lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office. 12 U.S.C.A. § 1464(b) and (c).

Evidently, the purposes and nature of the federal savings and loan associations and of the Puerto Rico Government Employees Association are not nearly corresponding, nor do they resemble in many respects. Or as the Supreme Court of Puerto Rico concluded in its opinion in the case at bar: "The great difference between these two institutions is clear." (Appendix of Petition, p. 33).

It is manifest that there is no conflict of decisions nor an important question of Federal law requiring decision by this Court.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

J. B. Fernandez Badillo
Solicitor General
Americo Serra
Assistant Solicitor General
Attorneys for Respondent.

Appendix

(A) Pertinent provisions of the Home Owners' Loan Act of 1933 (48 Stat. 128 et seq., 12 U.S.C.A. § 1461 et seq.):

Section 5(a), (12 U.S.C.A. § 1464(a)):

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

* * *

Section 5(b), (12 U.S.C.A. § 1464(b)):

"Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board."

* * *

Section 5(c), (12 U.S.C.A. § 1464(c)):

"Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office; . . . ."

• • •

Section 5(h), (12 U.S.C.A. § 1464(h))

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes) and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar mutual or cooperative thrift and home financing institutions."

• • •

(B) Pertinent provisions of Act No. 52 of July 11, 1921, as amended (3 L.P.R.A. § 831 et seq.):

Section 1 (3 L.P.R.A. § 831):

"There is hereby created a public institution, compulsory upon all permanent public employees and officials of the Commonwealth Government of Puerto Rico rendering services in Puerto Rico, including public-school teachers, except as provided in sections 335 and 336 of Title 18, the professors, officials and employees of the University of Puerto Rico, and the

members, officers and chiefs of the Police of Puerto Rico, and upon the permanent employees of the Association hereby created; . . . . . .

. . . . . .

the purposes of which shall be to stimulate saving among its members and to insure them against physical disability or death, to make loans, to provide them with homes and clinics for medical treatment for themselves and their families, and any other activity which the board of directors may, after study, deem beneficial and adequate for the purposes hereof, subject to the laws which govern said association; and to promote by all available means and resources the betterment and individual and collective progress of the members thereof in the economic, moral and physical orders, for which purpose the directing body of said association is hereby granted the necessary powers and authority to prescribe regulations and to adopt the resolutions indispensable therefor, including the fixing and collection of uniform quotas for medical services."

* * *

Section 2 (3 L.P.R.A. § 832):

"Every head of an office, bureau, agency or department of the Government of Puerto Rico who is by law bound to certify the pay rolls of the personnel thereof, shall deduct three (3) per cent from the total monthly salary of all permanent employees and officials of the Government of Puerto Rico and of this association, which sums shall be set aside by the Secretary of the Treasury of Puerto Rico to constitute the Savings and Loan Fund; . . . ."

* * *

Section 5 (3 L.P.R.A. § 835, 1961 Supp.):

"This institution shall be governed by a board of directors composed of thirteen (13) members, in which each of the three branches of government, namely: the legislative, executive and judicial, shall have at least two members."

* * * *

Section 8 (3 L.P.R.A. § 838):

"When one or more of the employees included in sections 831-859 of this title apply to the Board of Directors for a loan, if the application is recommended by the chief of his bureau or office and approved by the head of the department or office, the Board may, in its discretion, and in accordance with the conditions of the savings fund, grant the loan; and, should it so decide, the president of the Board shall issue a warrant against the funds of the institution, which shall be certified by the secretary in the same manner as if it were any other payment made by the Commonwealth Government, and said warrant shall be honored by the Secretary of the Treasury, the association to notify the head of the respective department or office for the purpose of making the proper deduction."

* * * *

Section 11 (3 L.P.R.A. § 841):

"The board of directors may grant extraordinary loans exceeding the amount of one month's salary, at a rate of interest of not to exceed six (6) per cent per annum, when the borrower offers the signatures of two property owners, each of whom pays taxes on real property to the Commonwealth of Puerto Rico, in an amount at least equal to the amount of

the loan, and the said two sureties shall be jointly and severally liable for the debt, and the said signatures shall be accepted by the secretary-accountant, with the approval of the President, after seeing the reports rendered by the registrars of property. The board of directors may also establish a system of security of personal loans by creating a trust fund which shall be used for such purpose, and shall fix and collect, in addition to the normal interest on such loans, any reasbnable premium or surcharge that the board of directors may determine according to experience, and which shall not be less than one (1) per cent on the value of the security, in excess of the savings and dividends accruing to each borrower in the Association.

. . . . . .

Likewise the board of directors may grant mortgage loans guaranteed by a first mortgage on rural or urban properties, the savings' fund of the member with this institution and his funds with the Retirement Board, when available therefor, serving as collateral security; and it may also grant mortgage loans guaranteed by the property that is to secure the loan in the first place, and when it is not sufficient to cover said guarantee, with his share in the savings' fund and in the pension fund as collateral, it may accept the guarantee of two sureties to supplement said loan and cover the whole amount of the security; . . ."

* * *

Section 12 (3 L.P.R.A. § 842):

"So long as the obligation in any of the cases specified in sections 839 and 841 of this title remains unpaid, on granting leave of absence to the borrower, the amount corresponding to the time of his leave

shall be deducted from his salary, and if he leaves with the purpose of resigning, the total amount of the indebtedness, or as much thereof as possible, shall be deducted."

* * * *

Section 20 (3 L.P.R.A. § 851):

"An insurance for death and physical disability is hereby created for the benefit of the members of this association."

* * * *

Section 23 (3 L.P.R.A. § 854):

"Whenever the savings fund of the association exceeds such sum as may be necessary to make loans for one salary, the board of directors, with the approval of the Secretary of the Treasury, may invest such sum as it may deem reasonable, in bonds or promissory notes of the Government of the United States, of the Government of Puerto Rico or of the municipalities. By resolution of a general assembly of the members of the association, the board of directors may establish consumption cooperatives, and building cooperatives for the building of dwellings for the members; . . . . . .

. . . . . .

The Savings and Loan Fund Association of the Employees of the Commonwealth Government of Puerto Rico is hereby authorized, upon resolution of its Board of Directors and the approval of the Secretary of the Treasury, to raise funds on its mortgage securities or any other securities in its possession, or otherwise negotiate same, whenever it may be convenient for the purpose of broadening, improving and extending the services it renders to its members. The

said securities may be negotiated through the Government Development Bank, for the account of the said Association, the services of the said Bank to be paid on a contract basis or by means of a premium on such securities."

• • •

Section 26 (3 L.P.R.A. § 857):

"Any amount which for any reason appertains to or must be delivered to any employee entitled to the benefits of sections 831-859 of this title, or to his legal beneficiaries or heirs, as the case may be, is hereby declared totally exempt from taxation, attachment or execution, but the same shall be applied to the liquidation of any loan, advance or debt which said employee may have pending with the association, without prejudice to any action or claim which the association may bring against the sureties; and without prejudice to the retention by the Secretary of the Treasury of any check which may be issued at any time or for any reason in favor of any employee, member or ex-member of the association who is in debt to it."

• • •

Section 26(a) (3 L.P.R.A. § 858):

"The properties of the Savings and Loan Fund Association of the Employees of the Commonwealth Government created by sections 831-859 of this title are hereby declared exempt from the payment of all kinds of taxes."